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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

Case No. 4099

12 **JORGE ANTONIO GALVEZ**
13 1449 Tamarind Ave., Apt. #3
14 Los Angeles, CA 90028

STATEMENT OF ISSUES

15 Applicant for Pharmacy Technician
16 Registration

Respondent.

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about June 14, 2010, the Board of Pharmacy (Board) received an application
23 for a Pharmacy Technician Registration from Jorge Antonio Galvez (Respondent). On or about
24 May 20, 2010, Respondent certified under penalty of perjury to the truthfulness of all statements,
25 answers, and representations in the application. The Board denied the application on April 28,
26 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 480 provides, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"(3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

....

"(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

5. Section 490 provides, in pertinent part

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code."

13 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
14 subject to discipline, including suspension or revocation.

15 7. Section 4301 provides, in pertinent part:

16 "The board shall take action against any holder of a license who is guilty of unprofessional
17 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
18 Unprofessional conduct shall include, but is not limited to, any of the following:

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20 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
21 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
22 whether the act is a felony or misdemeanor or not.

23

24 "(l) The conviction of a crime substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
27 substances or of a violation of the statutes of this state regulating controlled substances or
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

1 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
2 The board may inquire into the circumstances surrounding the commission of the crime, in order
3 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
4 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
5 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
6 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
7 of this provision. The board may take action when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
10 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
11 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
12 indictment.

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14 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
15 violation of or conspiring to violate any provision or term of this chapter or of the applicable
16 federal and state laws and regulations governing pharmacy, including regulations established by
17 the board or by any other state or federal regulatory agency.

18 "(p) Actions or conduct that would have warranted denial of a license."

19 **REGULATORY PROVISIONS**

20 8. California Code of Regulations, title 16, section 1770, states:

21 "For the purpose of denial, suspension, or revocation of a personal or facility license
22 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
23 crime or act shall be considered substantially related to the qualifications, functions or duties of a
24 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
25 licensee or registrant to perform the functions authorized by his license or registration in a manner
26 consistent with the public health, safety, or welfare."

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of a Crime)**

3 9. Respondent's application is subject to denial under section 480, subdivisions (a)(1),
4 (a)(2), and (a)(3), in that Respondent was convicted of a crime as follows:

5 a. On or about May 13, 2010, after pleading *nolo contendere*, Respondent was
6 convicted of one misdemeanor count of violating Penal Code section 484G, subdivision (a)
7 [fraud], in the criminal proceedings entitled *The People of the State of California v. Jorge Antonio*
8 *Galvez* (Super. Ct. Los Angeles County, 2009, No. OHY00043). The Court sentenced
9 Respondent to serve 90 days in the Los Angeles County Jail, placed him on probation for a period
10 of 36 months, and fined him. The circumstances surrounding the conviction are that on or about
11 October 27, 2009, Respondent with the intent to defraud another person, used for the purpose of
12 obtaining money, goods, services, or anything else of value, an access card or access card account
13 information that was altered, or obtained, knowing that the card or signature was forged, expired,
14 or revoked.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Acts Warranting Denial of Licensure)**

17 10. Respondent's application is subject to denial under sections 4301, subdivision (p) and
18 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed an act which if done by a
19 licentiate of the business and profession in question, would be grounds for suspension or
20 revocation of her license as follows:

21 a. Respondent was convicted of a crime substantially related to the qualifications,
22 functions, or duties of a pharmacy technician which to a substantial degree evidence her present
23 or potential unfitness to perform the functions authorized by her license in a manner consistent
24 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l), and 490,
25 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
26 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph
27 (a), inclusive, as though set forth fully.

b. On or about May 13, 2010, Respondent was convicted of a crime involving acts of moral turpitude, dishonesty, fraud, or deceit in violation of section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph (a), inclusive, as though set forth fully.

PRAAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying the application of Jorge Antonio Galvez for registration as a Pharmacy Technician; and
2. Taking such other and further action as deemed necessary and proper.

DATED:

3/19/12

Virginia Herold
VIRGINIA HEROLD

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

LA2011601011